

### § 230.26 General considerations in preparing Corps EISs.

(a) *Interdisciplinary preparation.* See (40 CFR 1502.6).

(b) *Incorporation by reference.* To the maximum extent practicable, the EIS should incorporate material by reference in accordance with 40 CFR 1502.21. Footnotes should be used only where their use greatly aids the reader's understanding of the point discussed. Citation in the EIS of material incorporated by reference should be made by indicating an author's last name and date of the reference in parentheses at the appropriate location in the EIS. The list of references will be placed at the end of the EIS. Only information sources actually cited in the text should appear in the reference list. The reference list should include the author's name, the date and title of the publication, personal communications and type of communication (e.g., letter, telephone, interview, etc.).

#### APPENDIX A TO PART 230—PROCESSING CORPS NEPA DOCUMENTS

NEPA documents for Civil Works activities other than permits will be processed in accordance with the instructions contained in this appendix and applicable paragraphs in the regulation.

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##### 1. Feasibility Studies

a. *Preparation and Draft Review.* During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the feasibility report. This environmental evaluation should be continued in the feasibility phase, and if the need for an EIS develops the district commander will issue a notice of intent as early in the feasibility phase as possible. Following the guidance in ER 1105-2-10 through 60, the district commander will prepare a draft feasibility report combining or integrating the draft EIS or EA and draft FONSI (as appropriate),

or a separate NEPA document and circulate it to agencies, organizations and members of the public known to have an interest in the study. Five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 for filing after distribution has been accomplished. After receipt and evaluation of comments received, the district commander will prepare the final report and EIS or EA and FONSI and submit it to the division commander for review.

b. *Division Review.* After review, the division commander will issue a public notice of report issuance and transmit the report to the CEBRH. On Mississippi River and Tributaries projects, the district commander will issue a public notice and submit the report to the CEMRC. For the purpose of this regulation, only the acronym CEBRH will be used since the review functions of CEMRC and CEBRH are similar. The notice will provide a 30-day period for comments to be submitted to CEBRH on the report and EIS. Although the EIS in the report is identified as "final" at this stage of processing, it should be made clear to all those requesting a copy that it is an "Interim Document under Agency Review—Subject to Revision" and will become the agency's final EIS when it is filed after CEBRH review.

c. *CEBRH Review.* CEBRH will review the EIS at the same time it reviews the final feasibility report. The report and EIS should be compatible. If the CEBRH review requires minor revisions (with insignificant impacts) to the plan as recommended by the division and district commanders, these changes and impacts shall be noted in the CEBRH report. If the CEBRH action results in major revisions to the recommended plan and revisions are variants of the plan or are within the range of alternatives considered and discussed in the draft EIS, an addendum to the final EIS will be prepared by CEBRH (with assistance from the district commander, as required). This addendum "package" will be identified as an "Addendum to the Final EIS—Environmental Consequences of the Modifications Recommended by the Board of Engineers for Rivers and Harbors—project name." The format shall include an abstract on the cover page; recommended changes to the division/district commander's proposed plan; rationale for the recommended changes; environmental consequences of the recommended changes; and the name, expertise/discipline, experience, and role of the principal preparer(s) of the addendum. Letters received during CEBRH review which provide new pertinent information having a bearing on the modifications recommended by CEBRH will be attached to the addendum. If CEBRH proposes to recommend a major

revision or a new alternative to the plan recommended by the division and district commanders with significant impacts which were not discussed in the draft EIS, a supplement to the draft EIS will be required. After consultation with CEBRH and the division commander, the district commander will prepare and circulate the supplement to the draft EIS in accordance with paragraph 13(b). The supplement together with incoming letters of comment and Corps responses to substantive issues shall be incorporated into the existing final report and EIS with a minimum of page changes or revisions to reflect the modified or new proposed plan. CEBRH will review its proposed action in light of the comments received prior to taking final action on the report and EIS.

d. *Departmental Review.* The report and final EIS, together with the proposed report of the Chief of Engineers and the CEBRH report, will be filed with EPA at about the same time as it is circulated for the 90-day departmental review by Federal agencies at the Washington level and the concerned state(s). District commanders will circulate the proposed Chief's report, CEBRH report, and the report and final EIS to parties on the project mailing list not contacted by HQUSACE (groups and individuals known to have an interest in the study or who provided comments on the draft EIS) allowing the normal 30-day period of review. HQUSACE will provide a standard letter for the district to use to transmit these documents which explains the current status of the report and EIS and directs all comments to be sent to HQUSACE (CECW-P). Copies of the report appendices circulated with the draft need not be circulated with the report and final EIS. All letters of comment received on the report and final EIS together with HQUSACE responses and the draft record of decision (to be provided by the district commander) will be included with other papers furnished at the time the final Chief's report is transmitted to ASA(CW) for further review and processing.

e. *Executive Reviews.* After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to ASA(CW). After review ASA(CW) will transmit the report to OMB requesting its views in relation to the programs of the President. After OMB provides its views, ASA(CW) will sign the record of decision (ROD) and transmit the report to Congress. In situations where Congress has acted to authorize construction of a project prior to receiving ASA(CW) recommendations, the Director of Civil Works is the designated official to sign the ROD. In this case the ROD should only address the project as authorized by the Congress and not attempt to provide any additional justification of the Congressional action.

## 2. Continuing Authorities Program Studies

a. *Preparation and Draft Review.* During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the detailed project report (DPR). If the results of the reconnaissance phase warrant preparation of an EIS, the district commander will issue a notice of intent early in the ensuing feasibility study. Following the guidance in ER 1105-2-10 through 60 the district commander will prepare the draft DPR incorporating the EA and draft FONSI or draft EIS (as appropriate), and circulate it to agencies, organizations and members of the public known to have an interest in the study. If an EIS is prepared, five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 for filing after distribution has been accomplished.

b. *Agency Review.* After receipt and evaluation of comments the district commander will prepare the final DPR and EA/FONSI or final EIS and submit eight (8) copies to the division commander for review and approval. After review, the division commander will file five (5) copies of the final DPR and EIS with the Washington office of EPA. The division commander will not file the final EIS until notified by the district commander that distribution has been accomplished.

c. *Final Review.* Letters of comment on the final DPR including the final EIS will be answered by the district commander on an individual basis if appropriate. Two (2) copies of all incoming letters and the district commander's reply together with five copies of the final DPR and EIS and a draft of the record of decision will be submitted through division to the appropriate element within CECW-P. After review of the DPR and NEPA documents, the Director of Civil Works or Chief, Planning Division will approve the project and sign the record of decision if an EIS was prepared for the DPR.

## 3. Projects in Preconstruction Engineering and Design, Construction, and Completed Projects in an Operations and Maintenance Category

a. *General.* District commanders will review the existing NEPA document(s) to determine if there are new circumstances or significant impacts which warrant the preparation of a draft and final supplement to the EIS. If the proposed changes and new impacts are not significant an EA and FONSI may be used.

b. *Preparation and Draft Review.* As soon as practicable after the district commander makes a determination to prepare an EIS or

supplement for the proposed project, a notice of intent will be issued. The district commander will, in accordance with 40 CFR 1506.6, prepare and circulate the draft EIS or supplement for review and comment to agencies, groups and individuals known who may be interested or affected. Five (5) copies will be sent to Director, Office of Federal activities (A-104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 for filing after distribution has been accomplished.

c. *Agency Review.* The district commander will prepare the final EIS or supplement after receipt and evaluation of comments. Eight (8) copies will be transmitted to the division commander for review. After review the division commander will file five (5) copies with the Washington office of EPA. A copy of the final EIS or supplement and transmittal letter to EPA will be provided to the appropriate counterpart office within HQUSACE. The division commander will file the final EIS when the district commander has made distribution.

d. *Final Review.* Letters of comment on the final EIS or supplement will be answered by the district commander on an individual basis as appropriate. Two (2) copies of the incoming letters and the district commander's reply together with two copies of the final EIS or supplement and a draft of the record of decision will be submitted to the appropriate Corps official having approval authority. After review of the NEPA documents and letters, the appropriate approving official will sign the record of decision.

4. *Other Corps Projects.* Draft and final EISs for other Civil Works projects or activities having significant environmental impacts which may be authorized by Congress without an EIS having been previously filed and for certain real estate management and disposal actions which may require an EIS should be processed in a manner similar to that discussed in paragraph 3 of this appendix except that CERE-MC will be the coordinating office within HQUSACE for real estate actions.

#### APPENDIX B TO PART 230 [RESERVED]

#### APPENDIX C TO PART 230—NOTICE OF INTENT TO PREPARE A DRAFT EIS

1. *Purpose.* This appendix provides guidance on the preparation and processing of a notice of intent to prepare a draft EIS for publication in the FEDERAL REGISTER. A notice of intent to prepare a draft EIS or a draft supplement is discussed in 40 CFR 1508.22.

2. *Procedure.* District commanders shall publish a notice of intent in the FEDERAL REGISTER as soon as practicable after a decision is made to prepare a draft EIS or draft supplement. See 40 CFR 1507.3(e) for timing of notice of intent for Corps feasibility stud-

ies. Guidance on the format and content of the notice in the form of a sample notice of intent is contained in paragraph 4 of this appendix. District commanders shall also follow this guidance when publishing a notice of intent to withdraw a notice of intent when a decision has been made to terminate the EIS process.

3. *Publishing Documents in the T3Federal Register.* The following information is furnished for preparation and publication of notices of intent in the FEDERAL REGISTER:

a. A brief transmittal letter inclosing three (3) signed copies of the notice of intent should be processed through local Chief, Information Management channels to: HQDA, SFIS-APP, ATTN: Department of the Army Liaison Officer with the Office of the Federal Register, Alexandria, VA 22331-0302. This office will review and correct (if needed) all documents prior to publication in the FEDERAL REGISTER.

b. The notice must be signed by the official issuing the document along with the signer's typed name, rank and position title for military officials or name and position title for civilian officials. A signer cannot sign "as acting" or "for" if another name is shown in the signature block. All three copies sent forward must be signed in ink. A xerox copy of the signature is not allowed.

c. A six-digit billing code number must be typed or handwritten in ink at the top of the first page on all three copies of a notice. This billing code number can be found on GPO bills, GPO Form 400, in the upper left corner opposite the address. The billing code number will be indicated as 3710-XX. FOAs must submit an open-end printing and binding requisition, Standard Form 1, each fiscal year to cover FEDERAL REGISTER printing costs (reference 3(n)). Completed requisitions (SF-1) must be forwarded to reach HQUSACE (CEIM-SP) WASH DC 20314-1000 by 1 June of each year. Consult the local chief, Information Management for Assistance.

4. *Sample Notice of Intent.* The following is a sample notice of intent to be used by district commanders:

Department of Defense

Corps of Engineer, Department of the Army, 3710-XX (Use Local Billing Code Number)

Intent To Prepare A Draft Environment Impact Statement (DEIS) For a Proposed (Name and location of project, permit or activity).

Agency: U.S. Army Corps of Engineers, DoD.

Action: Notice of Intent.

Summary: The summary should briefly state in simple language what action is being taken, why the action is necessary, and the intended effect of the action. Extensive discussion belongs under the Supplementary Information caption.

For Further Information Contact: Questions about the proposed action and DEIS can be answered by: (Provide name, telephone number, and address of the person in the district or division who can answer questions about the proposed action and the DEIS).

Supplementary Information: The Supplementary Information should contain the remainder of the necessary information of the document. It should contain any authority citation, FEDERAL REGISTER citation to a previously published document, or CFR citation when appropriate and include a discussion of the following topics:

1. Briefly describe the proposed action.
2. Briefly describe reasonable alternatives.
3. Briefly describe the Corps' scoping process which is reasonably foreseeable for the DEIS under consideration. The description:
  - a. Shall discuss the proposed public involvement program and invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.
  - b. Shall identify significant issues to be analyzed in depth in the DEIS.
  - c. May discuss possible assignments for input into the EIS under consideration among the lead and cooperating agencies.
  - d. Shall identify other environmental review and consultation requirements.
4. Indicate whether or not a scoping meeting will be held. Indicate time, date and location if a meeting is scheduled.
5. Provide an estimated date when the DEIS will be made available to the public. (Provide date)

(Signature)

See par. 3.b. for instructions on signature

#### NOTE

- Text to be double-spaced. Use block format.
- Place local billing code number at the top of the first page on all three copies.
- Margins—one inch on top, bottom and right side; and one and one-half inches on the left side.
- Pages must be numbered consecutively.
- Text should be typed on one side only.
- Use 8½ by 11 inch bond paper or photocopy paper.

## PART 236—WATER RESOURCE POLICIES AND AUTHORITIES: CORPS OF ENGINEERS PARTICIPATION IN IMPROVEMENTS FOR ENVIRONMENTAL QUALITY

Sec.

236.1 Purpose.

236.2 Applicability.

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236.4 Background.

236.5 Policy and procedure.

236.6 Other agencies EQ measures.

AUTHORITY: Pub. L. 738, 74th Cong.; Pub. L. 89-72; Pub. L. 91-190.

SOURCE: 45 FR 28714, Apr. 30, 1980, unless otherwise noted.

### § 236.1 Purpose.

This regulation provides guidance for including Environmental Quality (EQ) measures in Corps of Engineers water resource development plans.

### § 236.2 Applicability.

This regulation is applicable to all OCE elements and field operating activities having Civil Works responsibilities.

### § 236.3 References.

- (a) PL 89-72
- (b) ER 1105-2-10
- (c) ER 1105-2-200

### § 236.4 Background.

(a) The role of the Corps of Engineers in the development of water and related land resources has gradually broadened over the past century. Starting with the development of navigation on the Mississippi River in 1824, the Corps role has grown to encompass, among others, flood control, beach erosion control and hurricane protection, hydroelectric power, recreation, water supply, water quality, fish and wildlife and low-flow augmentation. Laws, executive orders, and national policies promulgated in the past decade require that the quality of the environment be protected and, where possible, enhanced as the nation grows. As a result, the Federal role in EQ, including the Corps, has continued to broaden. Balancing economic and environmental interests is a major requirement to be considered in the planning of all Corps projects.

(b) Enhancement of the environment is an objective of Federal water resource programs to be considered in the planning, design, construction, and operation and maintenance of projects. Opportunities for enhancement of the environment are sought through each